

DAVID SCOTT,)	
)	
Petitioner,)	3:03-CV-0162-LRH-VPC
)	
vs.)	
)	ORDER
DON HELLING, <i>et al.</i> ,)	
)	
Respondents.)	
	/	

The court will deny petitioner’s application for a certificate of appealability. The standard for the issuance of a certificate of appealability calls for a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c). The Supreme Court has interpreted 28 U.S.C. §2253(c) as follows:

1 Where a district court has rejected the constitutional claims on
2 the merits, the showing required to satisfy §2253(c) is straightforward:
3 The petitioner must demonstrate that reasonable jurists would find the
4 district court's assessment of the constitutional claims debatable or
5 wrong. The issue becomes somewhat more complicated where, as
6 here, the district court dismisses the petition based on procedural
7 grounds. We hold as follows: When the district court denies a habeas
8 petition on procedural grounds without reaching the prisoner's
9 underlying constitutional claim, a COA should issue when the prisoner
10 shows, at least, that jurists of reason would find it debatable whether
11 the petition states a valid claim of the denial of a constitutional right
12 and that jurists of reason would find it debatable whether the district
13 court was correct in its procedural ruling.

14 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79
15 (9th Cir. 2000). Petitioner has not met this standard.

16 The court finds that jurists of reason would not find debatable the question whether
17 petitioner's habeas corpus petition was filed within the time allowed by the one-year statute of
18 limitations imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA) or that he is
19 entitled to equitable tolling of the limitations period for three separate periods of time, contending
20 his mental illness prevented him from filing his federal habeas corpus petition.

21 Following an evidentiary hearing, this court concluded that, while Scott did suffer
22 from some mental health disability, the disability was not sufficient to have prevented him from
23 filing his federal petition. The evidence presented demonstrated that Scott was able to pursue legal
24 action. He simply chose the wrong action to pursue. Scott's mental health did not make it
25 impossible to timely file his federal action. The Certificate of Appealability shall be denied.

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1 **IT IS THEREFORE ORDERED** that petitioner's application for issuance of a
2 certificate of appealability (docket #46) is **DENIED**.

3 **IT IS FURTHER ORDERED** that petitioner's application to proceed in *forma*
4 *pauperis* on appeal (docket #49) is **GRANTED**.

5 Dated this 27th day of March, 2006.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE